

REMARKS

Favorable reconsideration of this application is respectfully requested.

Claims 1-31 are pending in this application. Claims 4-5, 12, 25, and 30 were objected to for informalities.

In reply to that objection claim 4 is now properly numbered, and claims 5 and 12 to no longer recite "the identification information".

With respect to the objection to claims 25 and 30, the formulas recited therein are believed to be proper and consistent with the specification, see for example the specification at paragraphs [0036], [0041], and [0250].

Claims 1-2, 8-9, 15-16, and 20 were provisionally rejected on the ground of non-statutory obviousness-type double patenting as unpatentable over claims 1, 3-4, 6, and 8-9 of co-pending U.S. application serial no. 11/093,066. Claims 1-7 and 21-25 were rejected under 35 U.S.C. § 101. Claims 21, 26, and 31 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. patent 6,122,436 to Okada et al. (herein "Okada"). Claims 1-20, 22-25, and 27-30 were rejected under 35 U.S.C. § 103(a) as unpatentable over Okada as applied to claims 21, 26, and 31 in view of U.S. Patent Application Publication 2004/0105351 A1 to Ueki and Official Notice.¹ The above-noted rejections are traversed by the present response as now discussed.

Addressing first the outstanding double patenting rejection, the claims are herein amended to recite an additional feature not recited in the noted claims in the co-pending application, and specifically the claims now recite "the allowable range of the inter-layer jump being no more than 40,000 sectors". The claim amendments are believed to address the outstanding double patenting rejection.

¹ The statement for the rejection in the middle of page 8 of the Office Action of June 12, 2009 does not specifically cite Ueki and Official Notice, but the body of the rejection specifically references disclosures in Ueki and Official Notice, and thus the basis for the rejection appears to rely on Ueki and Official Notice.

Addressing now the rejection of claims 1-7 and 21-25 under 35 U.S.C. § 101, the claims are amended to clarify the statutory subject matter therein.

Claims 1-7 now clarify the method operations by tying them to an apparatus of a “decoding unit”.

Claims 20 and 31 are herein amended to no longer be directed to a “computer program” but instead to a “computer readable medium including computer executable instructions”, which is believed to be clearly directed to statutory subject matter.

Further, with respect to claims 15-19 applicants submit those claims are directed to statutory subject matter as they are directed to a physical apparatus of an “information recording medium”. Those claims are also directed to reciting a specific configuration thereof, which is a physical property of the information recording medium. Thereby, claims 15-19 are believed to be proper under 35 U.S.C. § 101.

Addressing now the above-noted prior art rejections, the claims as currently written are believed to clearly distinguish over Okada, and further in view of Ueki and Official Notice.

Initially applicants note the claims are herein amended to clarify certain language therein, and to recite an additional feature that “the allowable range of the inter-layer jump being no more than 40,000 sectors”. That feature is believed to be clear from the original disclosure, see for example paragraphs [0089], [0090], and Figure 6(A3) and the description thereto at paragraphs [0136]-[0139].

Applicants first respectfully submit none of the applied art disclose or suggest the clarified claim feature of “the allowable range of the inter-layer jump being no more than 40,000 sectors”.

Applicants also submit the previously recited claim feature of “determining an allowable range of . . . an inter-layer jump” is not met by the applied art. As shown for

example in Figure 6(A3) in the present specification, an inter-layer jump is a jump from a first layer to a second layer. In the claims as written such an inter-layer jump can be determined to have a specific allowable range, of a number of sectors that can be jumped. Applicants submit none of the applied art even discloses or suggests determining an allowable range of an inter-layer jump.

With respect to the claimed feature of an inter-layer jump the outstanding Office Action appears to cite Ueki for example at paragraph [0129].²

In reply to that grounds for the rejection, in Figure 11 referenced in paragraph [0129] in Ueki, Ueki discloses making a jump from a recording layer L0 to another recording layer L1, and from that recording layer L1 back to the recording layer L0. As shown for example in Figure 11 Ueki discloses a first jump from layer L0 to layer L1 at a step S38 and a jump from layer L1 to layer L0 at a step S45. However, Ueki does not disclose or suggest at any point determining an allowable range for that inter-layer jump. As graphically shown in Figure 11 Ueki discloses a jump from a point in layer L0 to a corresponding point in layer L1, and then from a point in layer L1 to a corresponding point in layer L0. Ueki does not appear or suggest in any way that an allowable range of such an inter-layer jump would be determined.

In fact Ueki discloses with respect to the jump at step S38 in cited paragraph [0129] “implement[ing] a focus jump from that position on the signal recording layer L0 to a position on the signal recording layer L1 at the starting edge of the optical disk second area 13b”. Similarly with respect to the jump at step S45 Ueki discloses controlling “the optical pickup 14 to implement a focus jump from that position on the signal recording layer L1 to a position on the signal recording layer L0 at the starting edge of the next first area 13a”. In such ways Ueki discloses specifying the portions where a jump can be made between the two

² Office Action of June 12, 2009, page 9, last full paragraph.

layers L0 and L1. Such a structure in Ueki teaches away from the claimed features in which an allowable range for performing an inter-layer jump is determined.

Stated another way, Ueki predesignates specific points at which a jump from a layer L0 to a layer L1 and from the layer L1 to the layer L0 can be made, and thereby it is irrelevant in Ueki to determine an allowable range for such an inter-layer jump.

Thereby, Ueki does not disclose or suggest, and in fact teaches away from, the claimed features, and in such ways Ueki cannot cure the recognized deficiencies in Okada.

Applicants also traverse the position for which Official Notice was taken in the Office Action as to modifying Okada and Ueki “to include all kinds of overhead time that involve in the jump to guarantee that the buffer in Okada et al. would not underflow in the reproduction of the data stream in Okada et al. and Ueki would not be interrupted”.³

Applicants first require that prior art be recited for such a proposition for which Official Notice was taken.

Applicants also note there is no evidence whatsoever in the record that “all kinds of overhead time” would be even relevant in Okada and Ueki, particularly as in the basis for the outstanding rejection Ueki teaches away from the claimed features.

In view of the foregoing comments applicants respectfully submit the claims as currently written positively recite features neither taught nor suggested by Okada, and further in view of Ueki and Official Notice. Thereby, the claims as currently written are believed to clearly distinguish over the applied art.

³ Office Action of June 12, 2009 the sentence bridging pages 10 and 11.

As no other issues are pending in this application, it is respectfully submitted that the present application is now in condition for allowance, and it is hereby respectfully requested that this case be passed to issue.

Respectfully submitted,

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